



1           Moreover, the 3/31/10 Order reflects the magistrate judge found that, unless  
2 protective measures were taken, Torres would continue his pattern of abusive and  
3 malicious litigation by filing a second amended complaint that would contain the same or  
4 similar frivolous or baseless allegations and claims. (*Id.*) Indeed, the 3/31/10 Order further  
5 reflects the concern was also based upon the fact that a vexatious litigant order that Judge  
6 James Ware of the United States District Court for the Northern District of California had  
7 issued against Torres for engaging in the same or similar conduct only had the effect of  
8 causing Torres to shift the venue for his vexatious litigation from the Northern District of  
9 California to this court. The magistrate judge's concerns were also based upon the  
10 following facts:

- 11           (1) Torres's FAC, which alleges that "since 2003, [he] has  
12           been an active litigator against the Bar (over 15 civil  
13           suits and appeals)[,]" and that he maintains a blog site,  
14           www.myspace.com/calbarblog, which is "known to all  
15           defendants at the Bar as nothing more than [his] attempt  
16           to dishonor the Bar and its 'esteem[ed]' judges and legal  
17           process (and its federal supporters) and defames the  
18           'even handed' disciplinary system within the Bar."  
19           (FAC, ¶ 18.)
- 20           (2) Torres's blog site, where he references his occupation as  
21           "Professional State Bar Ass Kicker[,]" asks others for  
22           their "help in fucking with a defacto union called the  
23           State Bar of California[,]" and proclaims "[h]ow to fuck  
24           (legally) with the State Bar and make them pay out of  
25           their ass for violating your civil rights."
- 26           3) Judge Ware's aforementioned vexatious litigant order,  
27           which the Ninth Circuit affirmed on appeal. *Torres v.*  
28           *State Bar of California*, no. 06-15571, 2007 WL

2399880 (9th Cir. Aug. 13, 2007).

(4) This court's own records, which establish that, in addition to the pending action, Torres filed a prior IFP request, which was denied because his accompanying complaint that raised similar § 1983 and other claims against the California Supreme Court, the State Bar, and the State Bar Court regarding his suspension from the State Bar contained claims that were legally and/or factually patently frivolous. *Torres v. California Supreme Court, et al.*, no. SACV 06-890, order denying IFP request (C.D. Cal. Oct. 11, 2006). The court's own records also establish Torres has filed other § 1983 complaints against unrelated defendants that have been dismissed for failing to state a claim.

(3/31/10 Order at 33-34.)

Based upon the foregoing, the 3/31/10 Order dismissed the FAC with leave to amend "even though the defects appear[ed] to be incurable," and denied the pending motions to dismiss without prejudice as moot. (*Id.* at 35.) The 3/31/10 Order also directed Torres to file and serve either a second amended complaint or request to voluntarily dismiss the action by April 8, 2010. (*Id.*) The 3/31/10 Order also set forth the following directive:

In the event Torres elects to proceed by filing a second amended complaint, Torres is ordered to personally appear before the court on **April 15, 2010**, at 10:00 a.m., in Courtroom 6B of the Ronald Reagan Federal Building and United States Courthouse, located at 411 W. 4th Street, Santa Ana, California, 92701, and show cause: (1) why monetary sanctions of \$700.00 should not be imposed against him for filing the FAC, (2)

1 and/or why a vexatious litigant order should not be imposed  
2 against him that directs the clerk not to accept further filings  
3 from him without payment of the full filing fee and/or without  
4 written authorization from a judge or magistrate judge of the  
5 court, and (3) why further sanctions should not be imposed  
6 against him in the event the court finds his second amended  
7 complaint contains allegations and/or claims that are frivolous,  
8 malicious, or otherwise fail to state a claim for relief. In the  
9 event Torres files a second amended complaint, the time for the  
10 defendants to file and serve their responses is stayed until  
11 otherwise ordered by the court.

12 (*Id.*) Finally, the 3/31/10 Order gave Torres the following notice:

13 Torres is notified this action will be dismissed with prejudice  
14 for disobedience with a court order and want of prosecution,  
15 and that a vexatious litigant order may also be imposed against  
16 him, if he fails to comply with the terms of this order. No  
17 further notice will be given.

18 (*Id.*) Despite the foregoing warning, Torres violated the 3/31/10 Order by failing to file  
19 either a second amended petition or request for voluntary dismissal by the court-ordered  
20 deadline.

## 21 22 II. DISCUSSION

23 District courts may dismiss an action based on a plaintiff's failure to comply with  
24 a court order or want of prosecution. Fed. R. Civ. P. 41(b) ("Rule 41(b)"); *Link v. Wabash*  
25 *R.R. Co.*, 370 U.S. 626, 629-30, 82 S. Ct. 1386, (1962); *Pagtalunan v. Galaza*, 291 F.3d  
26 639, 640 (9th Cir. 2002) (affirming dismissal of habeas petition because of petitioner's  
27 disobedience with orders setting filing deadlines); *Ghazali v. Moran*, 46 F.3d 52, 53-54  
28 (9th Cir.), *cert. denied*, 516 U.S. 838, 116 S. Ct. 119 (1995) (affirming dismissal of

1 prisoner's civil rights complaint for failure to file opposition to motion to dismiss as  
2 required by local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (affirming  
3 dismissal of *pro se* litigant's civil rights complaint for failure to comply with district  
4 court's order to file an amended pleading).

5 In determining whether to dismiss a claim for disobedience with a court order or the  
6 failure to prosecute, the court must weigh the following factors: (1) the public's interest  
7 in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the  
8 risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on  
9 their merits; and (5) the availability of less drastic alternatives. *Pagtalunan*, 291 F.3d at  
10 642; *Ferdik*, 963 F.2d at 1260-61.

11 All five factors favor dismissal of Torres's FAC and the pending action. Torres's  
12 failure to file his second amended complaint or a request for dismissal in the time directed  
13 by the 3/31/10 Order has: (1) interfered with the defendants' right to be notified of the  
14 claims in a prompt manner and to prepare defenses thereto, (2) interfered with the public's  
15 interest in the expeditious resolution of this action, and (3) interfered with the court's need  
16 to manage its busy docket. Even the fourth factor -- the public policy favoring a  
17 disposition of cases on the merits -- favors a dismissal where, as here, Torres disobeyed  
18 the 3/31/10 Order by failing to file a second amended complaint raising meritorious claims  
19 despite being given an opportunity to do so. Finally, the court's warning to Torres that  
20 this action would be dismissed if he did not file the second amended complaint or a  
21 request for dismissal in the time and manner directed by the 3/31/10 Order constitutes a  
22 less drastic measure that was available and used by the court to compel his compliance  
23 before dismissal. Torres's disobedience with this less drastic measure leads the court to  
24 find further less drastic measures would be futile, and that an immediate dismissal of this  
25 action is warranted.

26 Finally, the court finds dismissal is appropriate because the Ninth Circuit recently  
27 held "[t]he failure of the plaintiff eventually to respond to the court's ultimatum -- either  
28 by amending the complaint or by indicating to the court that it will not do so -- is properly

1 met with the sanction of a Rule 41(b) dismissal.” *Edwards v. Marin Park, Inc.*, 356 F.3d  
2 1058, 1064-65 (9th Cir. 2004). The fact that Torres is a former attorney makes his failure  
3 to comply with the 3/31/10 Order completely inexcusable and underscores his  
4 vexatiousness.

### 5 III. CONCLUSION

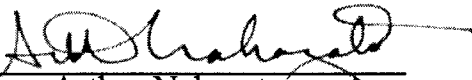
6 For the reasons set forth above, the reference to the Magistrate Judge is vacated, and  
7 this action is dismissed with prejudice pursuant to Rule 41(b). All pending motions are  
8 terminated and the clerk is directed to enter judgment accordingly and notify Plaintiff.  
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11  
12 Dated: December 8, 2010



13 GEORGE H. WU  
14 UNITED STATES DISTRICT JUDGE

15 Presented by:



17 Arthur Nakazato  
18 United States Magistrate Judge  
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